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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2016-6]

Reconsideration Procedure for Refusals to Register: Revised Deadlines

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final Rule.

SUMMARY: The U.S. Copyright Office is altering the deadline for submitting requests to reconsider refusals to register a copyright claim. Previously, a reconsideration request had to be *received* by the Office, via mail, no later than three months after the Office issued its decision to refuse registration. This rule has led to confusion, as it can be difficult to predict when a request will physically be received by the Office, particularly given security-screening-related delays in the processing of mail. Accordingly, to provide greater certainty to applicants, the amended rule provides that reconsideration requests only need to be *postmarked* or *dispatched* no later than three months after a refusal is issued.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, Associate General Counsel, resm@loc.gov; John R. Riley, Attorney-Advisor, [jrill@loc.gov](mailto:jril@loc.gov). Each person can be reached by telephone at 202-707-8040.

SUPPLEMENTARY INFORMATION:

Congress tasked the Register of Copyrights with the responsibility to assess the validity of copyright claims submitted for registration. 17 U.S.C. 408(a); 410(b). While the Office registers the majority of copyright claims, in some cases the applications do not meet statutory or regulatory requirements and, after examination, the Office refuses to register the claimed works. If an applicant disagrees with the Office's determination, he or she may appeal the decision within the Office. This administrative procedure is known as a "request for reconsideration." A first request for reconsideration is reviewed within the Registration Program. *See* 37 CFR 202.5(b)(1)-(3). If the Registration Program again refuses to register the work, it will send the applicant a written notification stating the reasons for refusal. 37 CFR 202.5(b)(4). An applicant can appeal that refusal via a second request for reconsideration to the Copyright Office Review Board. *See* 37 CFR 202.5(c)(1)-(3).

The current regulation requires both first and second requests for reconsideration to be mailed to the Copyright Office. 37 CFR 202.5(d).¹ Prior to the amendment made here, both first and second requests for reconsideration would be considered untimely if they were received by the Copyright Office more than three months after the date of the preceding refusal to register. *See* 37 CFR 202.5(b)(3), (c)(3). This regulation permits the Register of Copyrights to suspend or waive, in whole or in part, the time requirements for submitting a request for reconsideration, though only upon a showing of good cause. 37 CFR 202.5(e).

¹ The Office at this time is not allowing for electronic submission of requests for reconsideration, although it will consider implementing such a procedure as part of future information technology modernization efforts.

The Office recognizes that applicants requesting reconsideration of a refusal to register a copyright claim may benefit from a rule that requires an appeal to be postmarked within the prescribed time period, rather than a deadline based upon when the appeal is received by the Office. In particular, the Office understands that it can be difficult to predict how long it will take for a reconsideration request to actually be received by the Office, particularly given security screening related delays. Accordingly, the Office has decided to adopt a “mailbox” or “postal” rule for requests for reconsideration delivered by the United States Postal Service or dispatched by a commercial carrier, courier, or messenger, which will offer applicants greater certainty while continuing to ensure that appeals are considered in a timely fashion. This rule will apply to any appeals that are postmarked or dispatched after the rule’s effective date; for appeals postmarked or dispatched prior to that date, the previous regulation will apply.

The Copyright Office is publishing this amendment as a final rule without first publishing a notice of proposed rulemaking, as it constitutes a change to a “rule[] of agency . . . procedure, or practice.” 5 U.S.C. 553(b)(A). The rule does not “alter the rights or interests of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.” *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994). Other provisions that relate to submissions of reconsideration requests remain unaffected.

List of Subjects in 37 CFR Part 202

Copyright, Legal process.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202 as follows:

**PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO
COPYRIGHT**

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

2. Amend § 202.5 as follows:

- a. In paragraph (b)(3), remove the phrase “received by the Copyright Office” and add in its place the phrase “postmarked or dispatched by a commercial carrier, courier, or messenger”.
- b. In paragraph (c)(3), remove the phrase “received in the Copyright Office” and add in its place the phrase “postmarked or dispatched by a commercial carrier, courier, or messenger”.

Dated: September 2, 2016.

Maria A. Pallante,
Register of Copyrights and
Director of the U.S. Copyright Office

Approved by:

David S. Mao,
Acting Librarian of Congress

[BILLING CODE 1410-30-P]

